



CPAs & Business Advisors

Pulse Check

Business & Practice Management Issues for Health Care Professionals

WINTER 2012

How to Select Malpractice Coverage and Evaluate Carriers

Medical malpractice insurance isn't just a requirement; it's also a major practice expense. Selecting the terms of coverage is a complex, critical task, as is evaluating insurance carriers. In fact, the future of the practice and the reputation of the physicians may rest in the balance.

How much coverage do you need?

Every practice must address its malpractice coverage by asking: How much protection does it want, for what period and events? Malpractice coverage is stated in terms of limits per claim (usually \$1 million is the minimum coverage needed for a low-risk specialty in a low-risk geographic area) and the aggregate limit on payments over the life of the policy (frequently \$3 million, again if risks are low).

There are several types of coverage to choose from.

Most practices will be concerned with claims-made, tail and nose policies. A "claims-made" policy covers incidents that may occur during the policy period and that are reported while the policy is still in force.

When a physician changes policies, it's possible that some claims will be uncovered before the new policy kicks in. The gap can be filled by either "tail" coverage, which takes care of claims that arise after leaving the previous carrier, or "nose" coverage, which extends coverage of the new policy to an earlier date.

Which provisions must you scrutinize?

There are several policy provisions that physicians should review. Most doctors will want to include a "consent to settle" clause. It requires the carrier to obtain the physician's written permission before settling a claim against him or her. Without it, the insurer can settle a claim that the physician believes is defensible.

Another provision is related to the legal costs of defending a claim. Those costs, which can be upwards of \$100,000, may be included "inside" or "outside" the policy limits. The latter is better. Otherwise, a \$100,000 legal defense bill will be subtracted from a \$1 million per occurrence limit, leaving \$900,000 to cover court awards and damages.

It's also important to consider claim acknowledgment. An insurance carrier may acknowledge that a claim has been made in one of two ways:

1. It may require that the insured physician receive a "written demand for damages" from a prospective plaintiff, which means the physician must wait to actually be sued, or
2. The doctor him or herself is allowed to report an adverse outcome as a potential claim, known as "incident reporting."

The latter is the better choice because the physician can report the incident as soon as he or she becomes aware of it, thus precluding negative PR that comes with a written demand for damages. It also avoids delay in getting the issue out in the open and resolving

it. The physician has more control over the process.

Finally, every malpractice insurance policy excludes certain activities from its protection. So, make sure you check the exclusions provision to ensure it fits the kinds of practice activities you have in mind.


Which carrier should you use?

Malpractice insurance companies take many forms. Some are physician-owned; others are traditional commercial entities. Work with a broker or an independent agent to find the insurer that best suits your practice.

The carrier must have sufficient financial resources to satisfy all current and future damages claims against its policyholders. A close look at the carrier's annual report and other financial statements will reveal information about its surplus, net written premiums and loss reserves — key metrics of financial strength. Also look at ratings issued by industry analysts such as A.M. Best Company and Fitch. A rating of "A-" or better is desirable. Equally important is the carrier's management philosophy, which is reflected in its underwriting standards, claims management and actuarial policies.

The cost will depend on the carrier as well as the coverage needed and the physician's history of adverse events. To get more bang for your buck, take advantage of valuable preventive services that carriers offer to physician practices to help reduce their legal risk and maintain patient safety. For example, they may provide risk management tools through bulletins, publications and educational programs and even offer premium discounts for practices participating in the programs.

Work with the pros

Physicians need to carefully consider their malpractice insurance. If they don't, they may face serious legal and financial implications from not having proper coverage when they need it. To ensure the well-being of your physicians and your practice, make sure you work with an insurance broker, your attorney and your CPA. 

Healthcare Education Leadership Program

Mark your calendar for this upcoming session (held at the HMWC offices at 17501 East 17th Street, Suite 100, Tustin, CA 92780-7924):

Thurs., April 19, 12:00-2:00 p.m.

**Updates in Risk Management:
Where is your practice vulnerable?**

Questions?

Contact Marie Alvarez, (714) 505-9000 ext. 106 or hc@hmwccpa.com.

Get Ready for a RAC Attack

Medicare's Recovery Audit Contractor (RAC) programs have been operational in all 50 states since Jan. 1, 2010. And beginning Jan. 1, 2012, all states must have RAC programs in place to identify improper payments for Medicaid services.

RAC audits initially focused on inpatient settings, where the return on investigative effort is higher, but the audits are now focusing on outpatient settings. All physician practices that submit claims to these federal programs will likely be reviewed at some point by a RAC. So it's critical that your practice understand how the program works.

The purpose of the program

The RAC program is designed to identify and recover incorrect payments made for noncovered, duplicative and erroneously coded services. The audits are carried out by four private contractors assigned by region.

These contractors use software to analyze claims based on each practice's claims history. On that basis, the contractors may request access to internal documents such as medical records. Audits can reach back to claims paid as early as October 2007.

What happens if there's been an overpayment

When a RAC audit determines that there's been an overpayment, your practice will receive a letter demanding recoupment.

Interest begins accruing on the 31st day after the letter. If the practice files an appeal within 30 calendar days of receiving the letter, recoupment will be suspended. An appeal filed beyond 120 days after the letter won't be accepted.

How the appeal process works

There are five potential levels of appeal, should a practice wish to pursue them: 1) redetermination by the RAC, 2) reconsideration by the RAC, 3) administrative law judge, 4) Medicare Appeals Council, and 5) U.S. District Court.

If the practice wins the appeal, neither the RAC nor CMS may appeal further. Note that the first level of non-RAC appeal is to administrative law judges, who may be more sympathetic than the RAC.

How to prepare

Even though CMS is going after intentional fraud and abuse violators, it must investigate even minor violations in order to catch the major ones. Because there's a chance you could be

audited and the time frame for appeal is tight, you must be prepared:

1. Visit the RAC's website for your region and learn about specific codes and practice issues on which the RAC is focusing.
2. Review your billing and documentation practices for each area of RAC focus.
3. Hire a certified professional coder to audit a sample of E&M services as well as non-E&M services for each physician.
4. Review your practice compliance plan and make sure each step is operational. If you don't have a plan, begin the process to create one now.
5. Prepare a practice protocol for responding to all RAC inquiries, and designate a RAC response officer and staff who'll be involved.
6. Maintain a log to keep track of document requests, recoupment demands, appeal deadlines and final determinations.
7. Consider conducting a mock RAC attack to see how your practice will respond.

Final words of wisdom

If your practice receives an information or audit request, contact the source to determine the type of audit. Not all independent auditors are RACs or government-mandated. If it's a RAC audit, contact your health care advisor and an attorney. They can help you sort out the situation and determine the best course of action.



Healthcare Practice Leader

Steve Williams, CPA, is HMWC's Managing Partner and Healthcare Practice leader.

He has worked extensively with physicians and other high income taxpayers for over twenty years. He specializes in consulting services to medical practices, as well as tax and financial planning. He is a member of the American Institute of CPAs, the California Society of CPAs, the Medical Group Management Association, and Affiliated Healthcare Advisors. Steve is a frequent speaker on medical consulting and tax issues.



HMWC CPAs & Business Advisors specializes in business strategies for healthcare professionals. We offer a wide range of services, including sophisticated techniques to help your practice improve productivity, reduce costs, and maximize reimbursement.



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